



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERALHonorable John R. Shook  
Criminal District Attorney  
San Antonio, Texas

Dear Sir:

Opinion No. O-1485  
Re: Application of Article 7047e,  
Vernon's Annotated Civil Stat-  
utes, levying a stamp tax, to  
certain instruments.

We received your letter of September 20 and  
September 22, 1939, requesting our opinion in response  
to the following questions:

"1. A deed of trust securing a note for  
\$5,000.00 was executed and filed for record  
in September of 1936, and of course no stamps  
were placed upon the instrument. A new instru-  
ment has now been executed in which an addi-  
tional \$100.00 is being advanced, which is be-  
ing incorporated and made a part of the origi-  
nal note and deed of trust. The time and  
amount of payments and interest on the note  
are not changed. Is such an instrument sub-  
ject to the note tax?

"2. A deed of trust securing a note for  
\$5,000.00 was executed and filed for record be-  
fore the note tax went into effect. A new in-  
strument has now been executed for the sole pur-  
pose of reducing the interest rate, the princi-  
pal, payments and time of maturity remaining  
the same. Is such an instrument subject to the  
note tax?

"3. A deed of trust securing a note for  
\$55,000.00 was executed and filed for record  
prior to the effective date of the note tax law.

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The note is payable in semi-annual installments until December 1946, at which time the balance in the sum of \$28,000.00 will become due. An instrument has been executed and presented for recording extending the time of payment of the \$28,000.00 that will become due in 1946. There is now due on the note the sum of \$48,000.00. Is the instrument taxable as to the sum of \$48,000.00 now due, or only the sum of \$28,000.00, the payment of which alone is extended?

"4. If in the preceding fact situation, the rate of interest provided in the original note is being reduced by the new instrument, would the question be answered the same or differently?

5. "Is the contract of a mechanic, contractor or material man subject to the tax when filed in accordance with Article 5453 of the R. C. S., to secure a lien upon property enumerated in Article 5452?

6. "Is the affidavit of a mechanic, contractor or material man subject to the tax when filed for record in accordance with Article 5455 to secure a mechanic's lien when labor has been performed or material furnished by virtue of an oral contract?"

Article 7047c, Vernon's Annotated Civil Statutes, the same being Senate Bill No. 24, Acts 1939, 46th Legislature, reads in part as follows:

"(a) Except as herein otherwise provided there is hereby levied and assessed a tax of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars or fraction thereof, over the first Two Hundred (\$200.00) Dollars, on all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or recorded in the office of the County Clerk under the Registration Laws of this State; provided that no tax shall be levied on instruments securing an amount of Two Hundred (\$200.00) Dollars, or

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less. After the effective date of this Act, except as hereinafter provided, no such instrument shall be filed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this section; providing further that should the instrument filed in the office of the County Clerk be security of an obligation that has property pledged as security in a State or States other than Texas, the tax shall be based upon the reasonable cash value of all property pledged in Texas in the proportion that said property in Texas bears to the total value of the property securing the obligations; and, providing further that, except as to renewals or extensions of accrued interest, the provisions of this section shall not apply to instruments given in renewal or extensions of instruments theretofore stamped under the provisions of this Act or the one amended hereby, and shall not apply to instruments given in the refunding of existing bonds or obligations where the preceding instrument of security was stamped in accordance with this Act or the one amended hereby; provided further that the tax levied in this Act shall apply to only one instrument, the one of the greatest denomination, where several instruments are contemporaneously executed to secure one obligation; and provided further that when once stamped as provided herein, an instrument may be recorded in any number of counties in this State without again being so stamped . . ."

You will notice that after levying the tax the Statute then provides that "after the effective date of this Act, except as hereinafter provided, no such instrument shall be filed . . . until there has been affixed to such instrument stamps in accordance with the provisions of this section." There then follow various exceptions, among which is an exception in favor of extensions and renewals of instruments which have been theretofore stamped. There is no exception in the statute under which either of the instruments mentioned in your first two questions may fall. Under the expressed terms of the statute, therefore, both of such instruments are subject to the tax levied by Article 7047e and your first two questions are answered in the affirmative.

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If the instrument mentioned in your third question is a deed of trust securing the whole indebtedness of \$48,000.00, then such instrument is taxable as to the whole of such sum. On the contrary, if it is merely an extension agreement pertaining only to the sum of \$28,000.00, then, of course, the instrument should be stamped only as to that amount. We answer your third question in that manner since you do not make it clear as to the exact nature of the instrument in question.

Replying to your fourth question, it is our opinion that your third question would be answered the same, even though the rate of interest provided in the original note is reduced by the new instrument.

It is thought that your fifth question has reference to a written contract filed under Section 1 of Article 5453, Revised Civil Statutes. Article 7047e expressly provides for the stamping of mechanic's lien contracts and the written contract of a contractor or materialman would be an instrument of a similar nature. Our answer to your fifth question, therefore, is in the affirmative.

In our opinion No. 0-474, dated March 27, 1939, addressed to the State Treasurer, we held that affidavits made under Article 5453, 5455 and 5456, Revised Civil Statutes, were not subject to the stamp tax levied by Article 7047e, Vernon's Annotated Civil Statutes, as the same existed prior to the amendment by the Forty-sixth Legislature. Said Senate Bill No. 24, Forty-sixth Legislature, contains no amendment to the old article which in our opinion would affect our holding in this regard. Accordingly, our answer to your sixth question is a negative one.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*  
Glenn R. Lewis  
Assistant

GR:FL APPROVED OCT 2, 1939

*Bernard Mann*  
ATTORNEY GENERAL OF TEXAS

